IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 25 of 1995

For Approval and Signature:

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)
Versus
NAGBHAI KHODABHAI - Opponent(s)

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Appearance :
Mr.K.T.Dave, learned Additional Public Prosecutor for Appellant
None for Opponent(s) : 1,

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CORAM : HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 05/10/2007

ORAL JUDGMENT

1. The present appeal under Section 378 of the Code of Criminal Procedure has been filed by the appellant State of Gujarat against the judgment dated 21st October,1994 rendered by the learned Judicial Magistrate, First Class, Bagasara-Vadiya in Criminal Case No.496 of 1992, whereby all the four respondents original accused have been acquitted for the offences punishable under sections 324,325,326,504 and 114 of the Indian Penal Code read with Section 135 of the Bombay Police Act.

2. Leave to appeal was granted by this court vide order dated 29th March,1995 and the appeal was admitted on the same day. In the facts and circumstances of the case, the appeal is being finally heard and disposed of today.

3. The case of the prosecution in brief is that a complaint was filed by Harjivan Kanjibhai Rajgour to the effect that on 29th August,1992 at about 12.30 in the afternoon when the complainant was sleeping in his house, he heard the sound of a quarrel taking place near the house of his brother Raghavbhai, in

the market. Hearing the shouts, the complainant ran towards his brother's house and saw accused No.1 Nagbhai Khodabhai with an axe in his hand, accused No.3 Jaskubhai Nagbhai with a spade in his hand, accused No.4 Maniben Nagbhai with an iron pipe in her hand and accused No.2 Jorubhai Nagbhai with a stick in his hand. According to the complainant at that point of time, the accused No.4 was giving a blow with the iron pipe to Hasbaiben, the mother of the complainant, and the accused No.1 was giving a blow with the axe to the brother of the complainant i.e. Raghavbhai. The narration in the complaint is to the effect that the complainant came running there and snatched the axe from accused No.1 and threw it away. The complainant then snatched the spade from the hands of accused Jaskubhai and pipe from the hands of accused Maniben and threw them away. At that, the accused persons ran away from there. According to the complainant, the brother and mother of the complainant were injured and bleeding. So the complainant took them home and from there they were taken to the Government Hospital at Kukavav for treatment. It is further stated in complaint that, the injured witness Raghavbhai had sustained injuries on his head, left elbow and on the left side of the

back as well as near the ear, which were bleeding and the mother of the complainant Hasbaiben had sustained an injury on her head. On this complaint, the F.I.R. was registered vide Crime Register No.68 of 1992 at Bagasara Police Station.

4. On the filing of the complaint, as above, the investigative machinery was set into motion. The panchanama of the scene of offence (Exh.41), panchanama of the recovered muddamal articles (Exh.38), and panchanama of the injured persons (Exh.44) were prepared, the statements of the witnesses were taken and after completion of the investigation, the charge-sheet came to be filed. The charge (Exh.15) dated 23rd December,1992 was framed against the accused, and was read over and explained to them. The accused persons pleaded not guilty to the same and claimed to be tried. Accordingly, the case was put to trial. In support of the case of the prosecution as many as 12 witnesses came to be examined. After recording of the evidence of the prosecution witnesses was over, the learned Magistrate explained to the accused the statements appearing against them in evidence and recorded their statements under Section 313 of the Code of Criminal

Procedure, 1973. The defence of the accused persons was of total denial.

5. After having appreciated and evaluated the evidence on record, the learned Magistrate recorded a finding of acquittal, giving the accused persons the benefit of doubt, which has given rise to the present appeal.

6. This Court has heard Mr.K.T.Dave, learned Additional Public Prosecutor for the appellant State. The record shows that the respondents have been served. However, none appears on their behalf today.

7. It is submitted by Mr.K.T.Dave. Learned Additional Public Prosecutor that the judgment and order of the learned Magistrate is contrary to the weight of evidence on record and had the evidence been properly appreciated, especially the evidence of the complainant Harjivanbhai, the finding of acquittal could not have been arrived at by the Trial Court. The learned Additional Public Prosecution has submitted that there is ample direct and indirect evidence to connect the accused persons with the crime alleged against them, in the shape of both oral

and documentary evidence. He has further submitted that the medical evidence also supports the case of the prosecution. Therefore, it is submitted that the order of acquittal is erroneous and not warranted in the facts and circumstances of the case, and the appeal deserves to be allowed and the impugned judgment set aside.

8. This Court has perused minutely the record and proceedings of the case which have been summoned from the trial court and are available. Since the respondents are not represented by any learned counsel today, it is necessary to evaluate and re-appreciate the evidence recorded by the trial court and also the reasons assigned for acquittal by briefly summarising the salient features of the depositions of the prosecution witnesses, and other relevant evidence on record.

9. P.Ws.1, 2 and 3 are the main prosecution witnesses, on whose testimony the case of the prosecution hinges. The complainant Harjivanbhai is examined as P.W.1 at Exh.30. His testimony reveals that he has made certain embellishments and improvements over and above what is stated by him in

his complaint. In his examination-in-chief P.W.1 has stated that when he went to the scene of the incident he saw all the four accused persons giving blows to his brother Raghavbhai and mother Hasbaiben and, accused No.1 gave an axe blow to Raghavbhai on his head. He states that accused No.3 gave a spade blow which hit his brother on the left side of the head and on the left elbow. According to him accused No.2 gave a stick blow on the back of his brother and accused No.4 gave a blow with the iron pipe on the head of Raghavbhai. Similarly, according to this witness accused No.4 gave a pipe blow to his mother Hasbaiben and accused No.1 gave an axe blow to her which hit her on the head, and upon which his mother fell down, and further, accused No.3 gave a stick blow to his mother on her back and accused No.4 was standing with his foot on her head when he reached the scene of offence. This witness has stated that he snatched the axe from accused No.1 and the spade from accused No.3. He has further stated that the accused persons began to give vulgar abuses and went away from there and thereafter he took both the injured persons in a bullock cart to Kukavav Government Hospital. In his cross-examination P.W.1 states that when he heard the quarrel he reached at the spot and

at that time the accused No.4 was about to give a blow with the pipe and accused No.3 was about to give a blow with a spade to his brother Raghavbhai. This is in contradiction to his statement in examination-in-chief where P.W.1 says that he saw accused No.1 giving a blow with an axe to his brother and he snatched the axe away from the hands of the accused. This witness has stated in his examination-in-chief that the accused No.1 gave an axe blow to his mother which hit on her head, upon which she fell down. At the same time in his cross-examination this witness states that before the accused started giving blows to his mother they had already given blows to his brother Raghav and he i.e. the complainant, had snatched away the weapons from the hands of the accused. If that is so, then it is not understood how the accused No.1 gave an axe blow to his mother. In his complaint at Exh.31 P.W.1 simply states that his mother had sustained a blow on her head whereas in his testimony he has made certain improvements by adding that the accused No.4 gave a pipe blow on the head of his mother and the accused No.1 gave an axe blow on her head. Reading the testimony of the witness as a whole, it is evident that certain deep contradictions have crept in which throw doubt on the

genesis of the incident and there are certain improvements which go to show that the story has been concocted as an after thought.

10. P.W.2 Raghavbhai Kanjibhai is the injured witness and the brother of the complainant,who has been examined at Exh.33. According to his testimony the incident took place near his house, after he was returning with his mother from a religious ceremony. According to this witness the quarrel took place as the accused persons were digging a drain for water in front of his house and he objected to this. According to PW 2, the accused No.1 gave an axe blow to him on his head and thereafter, the accused No.4 gave a pipe blow on his head and the accused No.1 again gave a second axe blow on his head. This witness states that the accused No.3 gave a spade blow on his left ear and the accused No.2 gave a blow with the stick on his back and further the accused No.4 gave a pipe blow on his left elbow. According to P.W. Raghavbhai, his mother, who was nearby, intervened and the accused No.1 and the accused No.4 gave two-three axe and pipe blows on her neck and at that point of time his brother Harjivanbhai (P.W.1) came there and intervened. A notable feature of the testimony of

this witness is that at the very outset, P.W.2 Ragavbhai admits that he is totally blind in both eyes from the time of his birth. That being the admitted position, it is not believable that he could give such an illustrative account of the incident, including the blows given by the different accused persons, with different weapons to him and his mother. His testimony, therefore, cannot be believed and it is evident that he is parroting the version fed to him by the complainant or any other interested person but which has not been witnessed by him due to his blindness. Having no vision in both his eyes it could not be possible to him to see on which portion of the body the blows have hit his mother, or who was the perpetrator of those injuries and which was the weapon used. This being the position, the testimony of this witness does not inspire any confidence whatsoever.

11. The third important witness is P.W.3 Hasbaiben, examined at Exh.35. She is the mother of the complainant. She states that the accused No.1 gave an axe blow on her head and the accused No.4 gave a pipe blow on her head. She admits that this fact has not been stated in the complaint. According to this

witness the accused No.3 gave a spade blow on the head of P.W.2 Raghav and the accused No.2 gave a blow with the stick on his head. The narration of the incident given by P.W.3 does not match the narration made in the complaint or in the testimony of the complainant. In her cross-examination this witness states that the pipe blow was given to her at the back of her head and that she has sustained only two blows with the pipe and no other blows. Whereas P.W.1 has stated that the accused No.1 also gave a blow with the axe on the head of his mother. P.W.3 has admitted in her cross-examination that she did not sustain any axe blows on her head.

12. The medical evidence in the shape of the testimony of P.W.11 Dr. Vallabhbhai Ranchhodbhai Dhanani at Exh.49 also does not support the version given by the prosecution regarding the injuries sustained by the injured witnesses. P.W.11 was the Medical Officer at Community Health Center, Kukavav where the injured witnesses were first taken on 29th August, 1992. According to his testimony P.W.3 Hasbaiben had one injury on the lower right side of her head which was inflicted by a hard and blunt object and was simple in nature. According to P.W.11

the injuries sustained by P.W.2 are also simple in nature and caused by a hard and blunt object. P.W.10 is Dr.Bhimjibhai Laljibhai Dabhi- who was serving at the Government Hospital, Amreli where P.W.2 and P.W.3 took treatment later on. According to his testimony, the injuries sustained by both the witnesses were simple ones. The medical evidence, therefore, belies the narration in the complaint as well as the story put up by the prosecution witnesses.

13. P.W.4 Bisubhai Mamaiyabhai is the Panch of the panchanama of the recovery of weapon. He has stated that his signatures were taken on a prepared Panchanama (Exh.38) and has been declared hostile.

14. P.W.5 Danabhai Samatbhai is the second panch of the Panchanama at Exh.38 and he has also not supported the case of the prosecution. He has also been declared hostile.

15. P.W.6 and P.W.7 are the panchas of the panchanama at Exh.41 regarding the scene of incident. They have denied that they have seen the spot and have been declared hostile.

16. Although the prosecution has examined as many as 12 witnesses, the testimony of the remaining witnesses is not of much relevance.

17. It is the admitted case of the prosecution that the incident took place at 12.30 in the afternoon in a residential area where the accused persons were digging a drain and on the objection of P.W.2, the quarrel took place. Even so, no independent witness of the locality has been examined and the prosecution witnesses are close relatives of the complainant and two of them are also injured. The fact that the prosecution witnesses are close relatives of the complainant may not, by itself be a factor to disbelieve their evidence if it is otherwise clear, cogent and transparent. Being relatives, they may be natural witnesses available on the spot at the time when the incident took place. However, in the present case, it is seen that all the prosecution witnesses have given different versions of the same incident. There are material discrepancies and contradictions in their testimony and also various improvements which, when read together, do not give a consistent, truthful or clear picture at all. The testimony of the injured witness P.W.2, Raghavbhai is not worthy

of credence since he is totally blind and no reliance can be placed upon his description of the incident. A cumulative reading of the testimonies of the prosecution witnesses does not throw any light on how the actual incident took place and what was the role played by each of the accused. The medical evidence also does not support the version of the prosecution since the testimonies of P.W.10 and P.W.11, who examined the injured witnesses on the same day, make it evident that the injuries were simple ones and were caused by a hard and blunt object. The axe blows described by the prosecution witnesses are not proved by the injuries on P.W.2 and P.W.3. In fact, the inconsistencies and contradictions, coupled with the embellishments which have cropped up in the evidence of the prosecution witnesses, go to the very root of the matter.

18. When the entire genesis of the incident and the role supposed to have been played by the accused persons is shrouded in doubt and the testimonies of the prosecution witnesses are not credible, it cannot be said that the trial court has committed any error in acquitting the accused persons by giving them the benefit of doubt.

19. It cannot be lost sight of that this is an appeal against acquittal and unless the reasons assigned by the trial court are perverse, legally unsustainable or highly improbable, the Court would be slow to interfere. In the instant appeal, on re-appreciation and re-evaluation of the evidence in the light of the judgment and order of the trial court, this court finds that the order of the trial court is neither perverse nor palpably wrong or manifestly erroneous. Moreover, it is a cardinal principle of criminal jurisprudence that in an appeal against acquittal, if a second view is possible, then also the appellate court should not substitute its own view by reversing the findings of the trial court. In the instant case, this court finds that the view taken by the trial court is the only probable one, in the light of the evidence on record.

20. In the light of the reasons stated hereinabove, in the ultimate analysis, this Court does not find any valid or justifiable ground to interfere with the judgment and order of the trial Court.

21. For the foregoing reasons, the appeal is

dismissed.

(Smt.Abhilasha Kumari,J)

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